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The Globalization of Social Rights as a Legal Response to Economic Globalization

(Based on the European Right to Strike Laws)

I. Introductory Note

In order to cope with negative effects of the economic globalization an international society ought to undertake an effort to construct the fundamental social rights platform¹. Basic human social rights should be equally protected all over the world. One of the most important social human rights² in the modern world is the right to strike. The Author presents the Council of Europe Social Charter (revised) of 1996³ regulation as an example which is worth to follow by other Member States⁴. The *quasi* judicial monitoring system - set up at the European level - of compliance with the basic human social right – the right to strike used by workers to protect their other social rights is sufficient response to economic globalization⁵.

Article 6 § 4 of the Charter guarantees all stakeholders the right take part in collective action in the case of a labour dispute.⁶ This provision ensures that both parties to the labour dispute (both workers and employers) are granted the right to take part in collective action. It was not mentioned explicitly as to what type of collective action is permitted to all sides to the collective labour relations. However, in the case of the workers, it was specified they had the

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¹ Such proposal was presented by the Author in May 2005 during the biannual gathering of Polish labour and social security lawyers and legal scholars in the key paper entitled “Ochrona praw człowieka w świetle przepisów prawa pracy i zabezpieczenia społecznego” (Protection of human rights by labour and social security regulations) [In:] “Każdy ma prawo do...” (Everybody has a right to...), ed. A.M.Świątkowski, C.B.Beck, Warszawa 2005, pages 3-79. See also, R.Brillat, Labour rights as human rights, *ibidem*, p. 80-88; Angelika Nussberger, Social security as human right, *ibidem*, p.89-105.

² M.Mikkola, Social Human Rights of Europe, Helsinki 2010, p. 277 ff.

³ European Social Charter. Collected texts, 5th edition, Council of Europe Publishing, Strasbourg 2005, *passim*.

⁴ M-A. Moreau, European Fundamental Rights in the Context of Economic Globalization [In:] Social Rights in Europe, eds. G. de Búrca, B. de Witte, Oxford University Press, Oxford 2005, p. 367 ff.; Social Rights at European, Regional and International Level. Challenges for 21st Century, rds. N.Aliprantis, I. Papageorgiou, Bruylant, Bruxelles 2010.

⁵ A.M. Swiatkowski, The European Committee of Social Rights [In:] Protecting Labour Rights as Human Rights: Present and Future of European Supervision, ed. G.P. Politakis, ILO, Geneva 2007, p. 37 ff.

⁶ See: T. Novitz, International and European Protection of the Right to Strike, Oxford Monographs on Labour Law, Oxford University Press, Oxford 2003, pp. 125 and following, p.211 and following g; A.M.Świątkowski, European Social Charter: The right to strike, Managerial Law, vol. 47, No.6, 2005, p. 285 and following

right to all types of collective action, including the right to strike. The general regulation of stakeholders' rights to take part in collective action when there are cases of conflict of interests meant a legal basis was formed for the European Committee of Social Rights to extend its scope of protection of social rights in cases of collective labour disputes⁷. The Committee's rulings concern: the idea of collective action, the definition of a legal strike, the legal restrictions concerned in the utilisation of the right to organise strikes, the procedural requirements of carrying out and pursuing legal collective action and the legal consequences of collective action for workers. The Committee also undertook the steps for the legality of collective action taken up by employers.

II. Collective Action

Article 6 § 4 of the Charter does not indicate any specific collective actions, but for the right to strike, that may be undertaken by the workers in order to protect their interests. The Committee did not analyse nor discuss the collective actions, which can be organised based on Article 6 § 4 of the Charter. Instead, the Committee was only interested to learn about the types of collective action that are considered legal by the domestic collective labour regulations of a given country.⁸ It demanded to know from certain member states why domestic collective labour laws prohibited certain categories of workers, such as state officials, from partaking in collective action, permitting them only the right to strike.⁹

Since the first supervisory cycle the Committee was of the view that Article 6 § 4 of the Charter ensured stakeholders the right to carry out collective action. This provision states *expressis verbis* the right to strike, which workers may utilise in the case of a conflict of interest. Although the provision in question did not clearly state that in the case of conflict of interest, employers have the right to carry out collective action, and the Committee pointed out that the lockout was the basic if not the only mean of protecting the employers' interests against the excessive demands made by the trade unions representing the workers.¹⁰ It is somewhat difficult to determine whether Article 6 § 4 of the Charter ensures stakeholders the right to exert pressure on the other party to the collective labour relation, in order to regulate

⁷ The case law of the European Committee of Social Rights presented in the paper quoted as "*Conclusions*" was published in the book: A.Świątkowski, *The Charter of Social Rights of the Council of Europe*, Kluwer Law International 2007, p. 226 ff.; The other legal publications concerning case law on the right to strike regulated by the European Social Charter: J.Darcy, D.Harris, *The European Social Charter*, 2nd Edition 2001, *The Procedural Aspect of International Law Book Series*, Vol.25, Arsdley, New York; L.Samuel, *Fundamental social rights – case law of the European Social Charter*, Council of Europe Publishing, Strasbourg 2002.

⁸ *Conclusions XV-1*, vol.1, p.81 (Belgium), p.121 (Cyprus).

⁹ *Conclusions XIV-1*, vol.1, p.21; *Conclusions XV-1*, vol.1, p.202; *Conclusions XV-1*, vol.2, p. 477 (Portugal), p. 520 (Spain)

¹⁰ *Conclusions I*, pp. 38-39

the work conditions and the wages for the workers, who are represented in such collective labour relations by union organisations, meeting the demands of the trade unions. The handed down rulings of the European Committee of Social Rights, fore mostly deal with strikes organised by the workers. It should be assumed that the international collective labour law standards of the Council of Europe, do not respect the rule of equality when it comes to exerting pressure, which may be executed by stakeholders engaged in collective labour disputes.

A necessary requirement in carrying out a collective action in a collective labour relation is the conflict of interest between stakeholders. In accordance with the generally binding labour laws, the Committee is of the opinion the right to organise collective labour actions cannot exist in cases where there is a difference of opinion amongst stakeholders with regards to the interpretations and practices of applying the binding labour law regulations or provisions of collective agreements. According to the Committee, this point of view continues to convince even when stakeholders were to unanimously introduce into their collective agreements provisions allowing for discrepancy of opinion to form a necessary requirement justifying the organisation and the carrying out collective action.¹¹

III. Legal Strike

Article 6 § 4 of the Charter does not classify strikes into legal and illegal categories. It only regulates the workers' right to undertake legal collective action, which includes the right to strike. It therefore provides the ground for such classifications. In accordance with the understanding of the provision, a legal strike is one that falls into the scope of an analysed standard. A strike is a collective action organised by workers in order to exert pressure on the employer who regulates the conditions of work and the wages. The aim, therefore, of a strike is to create more favourable conditions of employments and better wages. Strikes may be organised by workers in order to protect the workers' interests against the actions of the employer. Strikes and other forms of collective action cannot be organised, if their aim is to protect the interests of workers who are employed by other employers, or to protect the rights of customers or consumers.¹² A conflict of interest between workers and the employer is therefore a requirement in order for a legal strike to be able to be organised.¹³ The provisions of Article 6 § 4 and Article 5 are closely interrelated. Collective action and strikes may be organised to meet the same goals, protecting both economic and social interests. In order of

¹¹ Conclusions I, p. 38

¹² As above

¹³ Conclusions XV-1, vol. 2, pp. 637-641 (Great Britain)

achieving such goals, workers join trade union organisations. The Charter does not protect the other interests of workers. Strikes induced by politics do not enjoy legal protection since Article 6 of the Charter is a norm, which ensures effective regulations for collective negotiations between stakeholders, whilst political issues cannot be negotiated through a collective agreement.¹⁴ Workers organise in trade unions, negotiate with employers and carry out collective action to ensure their economic and professional interests are protected. Therefore the legal protection ensured by Article 6 § 4 of the Charter does not protect strikes when they are organised to support the interests of other groups of workers. The Committee of Social Rights has not taken a stand with regards to the legality of solidarity strikes organised by one trade union in support of another union, which demand to be recognised by the authorities of member states and employer organisations. By referring to the jurisdiction of the ILO Trade Union Freedom Committee (Rights Committee), which does not ensure protection for solidarity strikes organised to support the demands made by other trade unions attempting to gain recognition, the European Committee of Social Rights stated the strikes aimed at protecting interests of the union, which is responsible for organising the strike, enjoy the legal protection guaranteed by Article 6 § 4 of the Charter.¹⁵ Workers are entitled to organise strikes with the view of protecting their economic, social and union related interests. Such interests do not have to be directly related to the negotiations aimed at entering into a collective agreement.¹⁶ The boundary of the Committee's jurisdiction in matters of legality concerning strikes organised and not in direct connection with the entering into collective agreements, has not changed since the initial supervisory cycles monitoring the compliance of the provisions of the Charter by member states. The Committee has handed down decisions concerning the failure of some domestic collective labour regulations meeting the requirements of Article 6 § 4 of the Charter. It was of the view that some authorities of member states considered the organisation of a strike, which did not exert pressure on employers in connection with the negotiating of collective agreements, as illegal.¹⁷ This was viewed by the Committee as a violation of Article 6 § 4 of the Charter. The Committee claims domestic collective labour regulations, which forbid workers from organising strikes which are unrelated to the negotiations of collective agreements, do not leave any possibility for the

¹⁴ Conclusions II, p. 27

¹⁵ Conclusions XVII-1, vol. 2, p. 290 (Malta)

¹⁶ Conclusions II, p.28; Conclusions III, p.96; Conclusions XII-1, p.129

¹⁷ Case of Germany: Conclusions XIII-2, p.282; Conclusions XIV-1, vol.1, p.310; Addendum to Conclusions XIV-1, pp.27-28; Conclusions XVII-1, vol.1, p. 206; Case of Iceland: Conclusions XIII-3, p. 135; Conclusions XIV-1, p.390; Conclusions XV-1, p.335. Case of Finland: Conclusions XV-1, vol.1, p.203; Conclusions XVII-1, vol.1, p.170; Conclusions XV-1, vol.1, p. 153 (Denmark); Conclusions XVII-1, vol.1, p.103 (Czech Republic)

fact that stakeholders also negotiate in order to enter into other normative agreements. According to the Committee, any negotiations aimed at regulating any issues that may evoke the interest of stakeholders, should be treated as collective negotiations, as understood by the provision of Article 6 § 4 of the Charter. This is irrespective of whether such negotiations are supported by domestic collective labour regulations or not.¹⁸ An example of a legal strike is an action organised by workers in order to exert pressure on the employer to comply with the health and safety regulation requirements and the protection of the health of the worker.¹⁹

Legal strikes can be organised by all workers irrespective of their membership in trade unions. Granting a monopoly according to the domestic collective labour law regulations, to a trade union organisation for organising collective actions, is a breach of the international labour law standards established by the European Committee of Social Rights. The Committee voiced its opinion it is in the best interest of both workers and employers to negotiate the work conditions and wages through collective labour agreements and other such normative agreements. Both sides also have the right to exert pressure on the other party in collective agreements. Irrespective of trade union membership, workers have the right to organise and partake in strikes, which are neither supported nor organised by trade unions. The Committee views the right to strike as a guarantee of an effective of collective negotiations by workers.²⁰ The Committee's judgments with regards to the opportunity to exercise the right to organise strikes, are not uniform. Firstly the Committee ruled domestic collective labour law regulations, which would allow for the right to organise a legal strike dependent on the decisions of either the trade unions or other organisations representing the workers' interests in the workplace where the majority were not represented by trade unions, was in compliance with Article 6 § 4 of the Charter.²¹ However the Committee soon changed its position and all subsequent cases where such domestic collective labour regulations within member states legalised strikes only on the premise that they would be organised by trade unions, were seen as a non-compliance of domestic laws with international standards.²² The Committee's position was that a group of workers, who had no legal status, had a right to organise a legal strike.²³ The Committee soon adopted a differing position with regards to this issue. Whist assessing the reports presented by the authorities of Sweden and Finland, states

¹⁸ Conclusions IV, p. 50

¹⁹ Conclusions II, p. 28

²⁰ Conclusions IV, p.50; Conclusions XV-1, vol.1, p.204.

²¹ Case of Portugal: Conclusions XIII-3, pp. 280-281; Conclusions XIII-5, pp. 179-180; Conclusions XIV-1, vol.2, p.662.

²² Conclusions XVII-1, vol.2, p. 420 (Portugal); Conclusions 2002, p. 237 (Sweden); Conclusions 2004, vol.2, pp.350-351 (Lithuania)

²³ Conclusions XV-1. Citing: The right to organise..., op. cit., p. 65

where collective labour law regulations legitimise a strike depending on whether the strike is organised or approved by a trade union (if the strike is organised by workers who are not members of trade union, the strike has to be carried out under the care of trade union patrons), the Committee came to the conclusion domestic collective labour law regulations did not create a particular hindrance for workers to form trade union organisation. Therefore those member states that have long lists of prerequisites and requirements needed for the establishment of a trade union, the right to organise and participate in a legal strike may depend on the way such collective actions are manoeuvred by trade unions.²⁴ If the validity of such collective actions as is a strike, forces workers to be dependant upon the requirements of domestic collective labour when intending to form trade unions in order to be able to organise a strike, the Committee is bound to evaluate the domestic labour law regulations. The Committee's ruling with regards to the compliance of member states with Article 6 § 4 of the Charter, therefore depends upon the conclusions made from the analysing of Article 5. The subject matters of such analysis are cases solely dealing with the compliance of member states to the standards established under Article 5 of the Charter. Amongst the domestic labour law regulations complying with the international standards based on Article 5 of the Charter, the Committee chooses those, which have the least requirements to be fulfilled by workers intending to establish a trade union organisation. If domestic labour law regulations do not hinder workers from establishing a trade union with the intention to strike, the Committee is of the opinion that granting a trade union a monopoly in supervising over a collective action is in accordance with Article 6 § 4 of the Charter. Domestic regulations, which complicate the establishment of a trade union by demanding requirements that are difficult to fulfil, are seen by the Committee as an inconsistency with Article 6 § 4 of the Charter. This is exemplified by a scenario in which a trade union is the only institution allowed to organise a strike.²⁵ Prior to handing down a decision with regards to Portuguese collective labour law regulations, which allow for trade unions only to organise strikes, and the compliance of such laws with Article 6 § 4 of the Charter, the Committee examined legal requirements concerning workers' rights to establish trade unions as well as how those requirements are put into practice. The Committee focused mainly on how long it took to register a trade union.²⁶ It also analysed whether a minority of workers employed by the one employer and who do not belong to a

²⁴ Conclusions XV-1, vol. 1, p. 204 (Finland); Conclusions XV-1, vol. 2, p. 566 (Sweden)

²⁵ Addendum to Conclusions XV-1, pp. 28-29 (Germany)

²⁶ Conclusions XV-1, vol. 2, pp. 477-478

trade union nor are represented by a trade union organisation, can organise a legal strike in order to protect their rights.

Public service employees also have the right to organise legal strikes. Article 6 § 4 of the Charter does not limit such a right. However, by the first supervisory cycle, the Committee was of the decision that domestic labour law regulations which would impose such restrictions, as verified by the reasons stipulated under Article 31 § 1 of the European Social Charter, would not be inconsistent with international standards. The Committee identified the following groups of public servants that may be restricted in organising strikes: policemen, professional servicemen, the judiciary, high-level public administrators²⁷, firemen and prison warders.²⁸ ut civilian personnel of the Ministry of Defence cannot be included into those categories of civil servants²⁹. The Committee regarded the exclusion of all public servants from the right to organise strikes as a breach of Article 6 § 4 of the Charter³⁰. Also permission given by the state to civil servants to engage in symbolic action is considered by the Committee as the breach of freedom to strike³¹. The protection of rights stated under Article 31 § 1 of the Charter forms the basis for such exclusions of the following rights: protection of rights and liberties, public order, national security, protection of public health and customs. The exemption from the right to organise strikes concerns the category of public servants whose tasks (falling within the scope of administration and authority of the state) are related to the protection of the principles enumerated under Article 31 § 1 of the European Social Charter. The Committee found that the Icelandic authorities were consistent with Article 6 § 4 in accordance with Article 31 § 1 of the Charter when they drew up a list of all public sector workers deprived of the right to organise strikes.³² The Committee demanded however, that the information concerning the criteria, with which this list was dependent upon, was produced. The Committee became aware that before the list was prepared, the state authorities consulted trade unions and permitted a trade union to appear before a labour court seeking an injunction concerning the addition of a certain category of public servants to the list. The Committee handed down a decision stating the Icelandic labour laws were consistent with international standards.³³

²⁷ Conclusions I, pp. 38-39; Conclusions II, p. 187 (Cyprus); Conclusions III, p. 36

²⁸ Conclusions V, p. 48 (France); Conclusions XIII-2, p. 282 (Malta)

²⁹ Conclusions 2010, vol.1, p.188 (Bulgaria).

³⁰ Case of Ukraine. Conclusions 2010, vol.2, p.637. See, A.M.Świątkowski, European Social Charter: the human right to strike and the rule of law [In:] *Wibrani roboty uczasnikow III Miżnarodnego Naukowo-Practicznego Forumu "Princip Wierchowienstwa Prawa i Prawa Ljudini"*, Kiev 2011, p. 43 ff.

³¹ Case of Bulgaria. Conclusions 2010, vol. 1, p. 188.

³² Conclusions XV-1, vol. 1, p. 122

³³ As above

At first the Committee maintained that member states having ratified Article 6 § 4 of the Charter could not effectively make a declaration concerning the exclusion of certain categories of public servants from the scope of the application of the provision in question.³⁴ The Committee found that a complete exclusion of certain public servants in Germany³⁵ from having the right to organise strikes, was a violation of Article 6 § 4 of the Charter.³⁶ After the Netherlands, having ratified Article 6 § 4 of the Charter, raised its objection against the inapplicability of this regulation to public service officials, the Committee reached the conclusion (as all member states accepted the objection) that under Article 20 of the Charter, member state authorities were entitled to exclude certain categories of public servants from the scope of Article 6 § 4 of the Charter.³⁷ On 28 September 1961, German authorities declared they would not apply Article 6 § 4 of the Charter to public officials. The Committee, however, regarded that this declaration had no legal basis.³⁸ It did however change its views after having examined the legal validity of the objections put forth by the Dutch authorities. It came to the conclusion the 1961 declaration could be treated as a reservation for the exclusion of the abovementioned categories of workers (public servants) from the provision of Article 6 § 4 of the Charter.³⁹ In summary of the argument presented, proving the Committee's tendency to changing its attitude towards the organisation of strikes in the public sector, the exclusions and restrictions of rights may:

- be justified only by the reasons stipulated under Article 31 § 1 of the European Social Charter. The Committee maintains the limitations, which extend beyond the scope of the general clause established under Article 31 § 1 of the European Social Charter is inconsistent with international standards.⁴⁰
- may relate only to some public servants. Granting the right to all public servants to organise symbolic strikes, especially granting the right to public servants who are employed by work agreements in the government sector⁴¹, and to those employed in

³⁴ Conclusions I, pp. 184-185 (Germany)

³⁵ German state officials – *Beamte*. See. T. Novitz, op. cit., pp. 307 and following

³⁶ Case of Germany: Conclusions III, p. 336; Conclusions IV, pp. 48-49; Case of Denmark: Conclusions XIV-1, vol. 1, p. 180; Conclusions XV-1, vol. 1, p. 153; Conclusions XVII-1, vol.1, p. 134; Conclusions 2004, vol. 1, p. 149 (Estonia)

³⁷ Conclusions VII, p. 39

³⁸ Conclusions I, pp. 184-185

³⁹ Conclusions VII, p. 39

⁴⁰ Conclusions 2004, vol. 1, p. 97 (Cyprus)

⁴¹ Conclusions 2004, vol. 1, p. 46.

privatised public institutions (such as in the postal system or the railways)⁴² is a breach of Article 6 § 4 of the Charter.

III. Restricting the right to strike

The right to strike is not absolute. It has some restrictions. In the Appendix to Article 6 § 4 of the Charter, authorities of member states were authorised to regulate, to a reasonable extent, the application of the right in question in a way that each further restriction of the law could be justified only by the circumstances stipulated either in Article 31 § 1 ESC or Article G § 1 of the Appendix to ESC. The right to strike may be restricted by: collective agreements, regulations established by member states and by the judicial decisions of courts.

1) Restricting the right to strike in collective labour agreements

Pursuant to Article 6 § 4 of the Charter, the restriction to strike imposed by the stakeholders in a collective agreement, is in compliance with international standards. Parties to the negotiation of collective agreements have the right to introduce the so-called “social peace clauses”, binding the workers’ representatives, signatories of collective agreements, to voluntarily refrain from any collective actions, including strikes, for as long as the collective agreement is in force. The voluntarily incorporated provision in a collective agreement by all parties, excluding or limiting the right to strike, is in compliance with Article 6 § 4 of the Charter.⁴³ A social peace clause is binding only upon those workers who are represented by a trade union, which has signed a particular collective agreement.⁴⁴ Workers, members of a trade union bound by a social peace clause – have to refrain from collective actions only in matters covered by the collective agreement. The same applied to trade unions that are signatories to collective agreements. Trade unions may refrain from carrying out collective actions whilst a collective agreement is in force.⁴⁵ In such cases, the Committee attempts to establish whether the signatories to the agreement have introduced the exclusion of the right to strike during the period when a collective agreement is in force, knowingly and voluntarily.

2) Restricting the right to strike, as introduced by the domestic legislation of member states

Member states enact regulations on collective bargaining. The legality of a strike is conditional on the fulfilment of certain procedural requirements by the organisers of a strike action that are introduced by the authorities of member states. State intervention during the workers’ process of carrying out their right to collective action (including a strike), consists of: restrictions the amount of entities entitled to organising strikes; establishing formal

⁴² Conclusions XVII-1, vol. 1, p. 207 (Germany)

⁴³ Conclusions I, p. 38; Conclusions VIII, p. 98 (Sweden); Conclusions XV-1, vol. 2, p. 521 (Spain)

⁴⁴ Conclusions VII, p. 40 (Sweden); Conclusions XIV-1, vol. 2, p. 619 (Norway)

⁴⁵ Conclusions XV-1, vol. 2, p. 432 (Norway); Conclusions XV-1, vol. 2, p. 521 (Spain)

requirements, which need to be met before a legal strike may proceed; introducing the obligation to exhaust all possible avenues of arbitration before declaring strike action; introducing the obligation to ensure the continuity of operation within certain workplaces. The right to introduce procedural requirements concerning strikes cannot be considered equivalent to the prohibition of collective actions and strikes.⁴⁶

3) Restricting the amount of entities entitled to organise strikes

No member state guarantees all workers the right to strike. Generally a precondition for a lawful strike is the establishment of a trade union organisation. Some member states restrict the trade unions that are not considered to be representative of the workers, the right to organise a strike. This requirement, that only representative trade union organisations have the right to organise strikes, is evident in the French labour law. Only the most representative trade unions in France can call strikes in the public sector⁴⁷. Whether a trade union is representative or not is determined not only by the level of membership, but also on the results achieved in a ballot carried out at a given workplace concerning various trade organisations and voting on the one that is most applicable to be representative of the workers. All workers employed by a given employer participate in such a ballot. The Committee is of the opinion that the above restriction on the right to strike is in breach of Article 6 § 4 of the Charter.⁴⁸ Workers have the right to carry out collective actions including strikes, regardless of whether they are unionised or not.⁴⁹ Therefore, the Committee concluded that the situation in Croatia⁵⁰ is not in conformity with the Charter on the ground that the right to call a strike is reserved only to trade unions the formation of which may take up to 30 days which is excessive which is considered as an excessive time frame⁵¹.

4) Procedural requirements needed prior to the commencement of a legal strike

According to the Committee, a requirement, which makes the decision to go on strike conditional on the approval of the executive committee of a trade union⁵² or of the majority of workers⁵³, is considered to be a violation of international standards. It is a breach of Article 6 § 4 of the Charter to carry out a ballot amongst workers, making voting obligatory with regards to the undertaking of a strike action, who are employed by the one employer against

⁴⁶ Conclusions XII-1, p. 128 (Iceland)

⁴⁷ Conclusions 2010, Vol.1, p. 267.

⁴⁸ Case of France: Conclusions 2002, p. 35-36; Conclusions 2004, vol. 1, p. 220

⁴⁹ Case of Romania: Conclusions 2002, pp. 135, 137; Conclusions 2004, vol. 2, p. 461

⁵⁰ Conclusions XIX-3 (2010), p. 43.

⁵¹ Conclusions 2010, Vol. 2 (Portugal), p. 504.

⁵² Conclusions 200, vol. 1, p. 97 (Cyprus); Conclusions 2010, Vol. 1 (Cyprus), p. 210.

⁵³ In the case of Romania 50% of workers. Conclusions 2002, p. 137; Conclusions 2004, vol. 2, p. 461. Whereas in the case of Lithuania 75% of workers. Conclusions 2004, vol. 2, p. 461

whom the strike is being organised.⁵⁴ The case of Great Britain is unique in this respect, since in the earlier supervisory cycles, the Committee was of the view that member states had the right to impose on the strikes organisers an obligation to carry out a secret ballot amongst the workers over a planned strike action.⁵⁵ The Committee found the requirements imposed by the British authorities to be too strict. Trade unions intending to organise strikes are obliged to notify the employer, at least 7 days in advanced, of the planned strike ballot⁵⁶ and to provide a list of workers participating in the ballot.⁵⁷ The Committee found the above requirements as too complicated. The Committee based its conclusion that such requirements were in breach of Article 6 § 4 of the Charter, on the assumption the said requirements were introduced with the view to enable the employer to exert pressure on the workers entitled to call on the strike.

The Committee did not, however, question the compliance of the domestic regulations with the international standards regarding the notice period required when there is a planned strike action. The Committee was of the opinion that in the case of a planned collective action, particularly a strike action, notice periods help calm down the emotions and help to consider what is involved in organising a strike. The literature on collective agreements refers to such notice periods as “*cooling off periods*”, a term effectively justifying their purpose of being introduced by the member states. The Committee claims the obligation to notify the employer of the planned collective action in advance cannot be considered as a restriction on the right to strike.⁵⁸ However the length of the notice period may be restrictive. The Committee, by definition, does not establish a model of legal solutions and therefore does not specify what notice periods are in line with international standards. It only assesses the labour legislation enacted within the member states. The Committee handed down the following decision concerning member states imposing extended notice periods. When domestic labour law requires prolonged notice periods (lasting for several weeks) prior to the commencement of planned strike actions, especially on the request of the employer or a public administrative body, and also requires the plan to be presented to a court or an arbitration tribunal, the Committee sees this as a violation of Article 6 § 4 of the Charter.⁵⁹ Also the Committee concluded that the requirement to notify the duration of strikes concerning essential public services to the employer prior to strike action is excessive.⁶⁰

⁵⁴ Conclusions XV-1, vol. 2, p. 641 (Great Britain)

⁵⁵ Conclusions II, p. 187, Conclusions XIV-1, vol. 1, p. 389 (Iceland)

⁵⁶ Conclusions XII-1, p. 131; Conclusions XIV-1, p. 805; Conclusions XV-1, vol. 2, p. 639

⁵⁷ Conclusions XV-1, vol. 2, 639

⁵⁸ Conclusions I, p. 38

⁵⁹ Conclusions XIV, vol. 1, p. 157; Conclusions XV-1, vol., p. 123

⁶⁰ Conclusions 2010, vol.1 (Italy), p. 326.

5) Compulsory referral of collective disputes to an arbitration tribunal

Some member states make it compulsory for collective dispute cases to undergo arbitration. The purpose of such a procedure is to defer a collective action or a strike. Compulsory arbitration stipulated under the legislation of member states is permissible, if it serves to protect the rights and liberties referred to in Article 31 § 1 ESC or in Article G § 1 RESC. Such restrictions placed upon the right to strike, based on the provisions of the Charter, should not be excessive. The timeframe with which they are utilised should be limited. Under no circumstances should such restrictions exceed that which is needed to return the situation to normal.⁶¹ If there is an absence of the circumstances that are stipulated under Article 31 § 1 ESC and Article G § 1 RESC, the Committee may conclude domestic labour legislation of member states is noncompliant with international standards in the following situations: if state authorities prolong the existence of a collective agreement that is in place (generalisation)⁶² and when there is an imposition of compulsory arbitration before a trade union is entitled to pass a resolution to call a strike.⁶³ A similar stand was adopted in cases where collective disputes had to be referred by trade unions to mediation⁶⁴, in cases when the mediation period was extended by member states to thirty days⁶⁵ or when the mediator was authorised by way of a ballot to suggest a resolution of the collective dispute in a way the mediator saw most appropriate, and not in a way presented by a trade union representing workers. The mediator is bound by the position taken up by the trade union. However, when more than one trade union participates in the dispute on behalf of the workers, each having the right to propose different methods of solving the dispute, Danish labour law authorises the mediator to decide the several solution proposals are to be considered as a whole for voting purposes (*linkage rule*). This procedure was considered by the Committee as a violation of Article 6 § 4 of the Charter.⁶⁶ Also as a violation of that provision of the Charter was qualified the state legislative action to impose compulsory arbitration to end a strike in cases which go beyond derogations permitted by art.31 of the Charter⁶⁷.

6) The obligation to ensure continuous operation of certain workplaces

⁶¹ Conclusions X-1, pp. 74-75

⁶² Case of Denmark: Conclusions XI-1, p. 87; Conclusions XII-1, p. 127; Conclusions XIX-3, p.83.

⁶³ Case of Norway: Conclusions XI-1, pp. 89-90; Conclusions XII-1, p. 130; Conclusions XIII-1, pp. 158-159; Conclusions XIV-1, pp. 622-623; Conclusions XV-1, p. 432

⁶⁴ Conclusions 2002, p. 136 (Romania)

⁶⁵ Conclusions XVII-1, vol. 1, p. 103 (Czech Republic)

⁶⁶ Conclusions XVII-1, vol. 1, pp. 132, 134 (Denmark)

⁶⁷ Conclusions XIX-3 (2010), p.221 (Spain).

Member states may restrict the right to strike with regards to workers employed in private employment, in order for the rights and liberties as are stipulated under Article 31 § 1 ESC and Article G § 1 RESC be protected. The Committee is adopting the same approach as it did in relation to workers engaged in public services and the interpretation of Article 6 § 4 of the Charter. The scope of restrictions to the right to strike for workers employed in the private sector depends upon the level of services provided to local communities by such workers. The Committee takes the view that the restriction to the right to strike is permissible only in situations when the cessation of work within such a workplace constitutes a serious danger for the existence of a given community.⁶⁸ When reviewing the restrictions on the right to strike imposed by member states, the Committee examines whether such restrictions apply to workers in employment that is crucial to local communities, and whether, instead of restricting the right to strike, it would be possible to oblige the striking participants to provide necessary services. The Committee opposes the idea that authorities of member states reserve the right to define the minimum range of services, which would be provided during a strike action.⁶⁹ It also emphasises the manner in which such restrictions are being introduced. Special attention is drawn to ensuring strike organisers are entitled to appeal against the decisions handed down obliging workers to provide continuous operation of a workplace during the period of a strike.⁷⁰ Analysing the Committee's conclusions with regards to the argument in question, leads to the point the following factors justify the introduction of such restrictions to the right to strike: the scope, the length of the strike and the importance of the workplace and the services it provides to the local community, which is carrying out a strike.⁷¹ In cases where a strike could have irremediable effects on the life of a local community, the Committee formed an opinion that the restrictions imposed on the right to strike, were in line with international standards. When such restrictions however, encompassed various workplaces within various sectors of the market or when they were too broadly defined, the Committee's ruling in this respect was negative.⁷² The Committee

⁶⁸ Conclusions I, p. 38

⁶⁹ Conclusions XVII-1, vol. 2, p. 420 (Portugal)

⁷⁰ Conclusions XII-2, p. 114; Conclusions XIII-1, pp. 156-157; Conclusions XIII-3, p. 137; Conclusions XV-1, vol. 2, p. 480

⁷¹ Case of Portugal: Conclusions XIII-3, p. 281; Conclusions XIII-5, p. 181; Conclusions XIV-1, vol. 2, p. 663; Conclusions XV-1, vol. 2, p. 479; Conclusions XV-1, vol. 2, pp. 367-368 (Italy); Conclusions XV-1, vol. 2, p. 523 (Spain); Addendum to Conclusions XV-1, p. 30 (Germany)

⁷² Case of Portugal: See: The Right to Organize...op. cit, p. 71; Conclusions 2004, vol. 1, p. 46 (Bulgaria), which declared the unlawfulness of strike in the public health care, in the power industry and in the telecommunications sector. Conclusions 2004, vol. 2, p. 351 (Lithuania) – due to the ban of strikes in power plants and in the gasworks; Conclusions XIX-3 (2010) – prohibition from striking all categories of employees employed at nuclear power stations, oil or gas pipelines, in the fire services and air traffic control centers, healthcare and

claimed the default on the obligation stipulated under Article 6 § 4 of the Charter is related to the provision Article 1 § 2 of the Charter, which would violate the prohibition against forced labour that is stipulated under that provision.⁷³

To ensure the continuity of operation within a workplace, authorities of some member states replace the striking workers with strike breakers. The Committee has dealt with three such cases. The *cases* of Germany have served twice as a basis for disparate conclusions of the Committee. Initially the Committee took the view the replacement of workers striking in public workplaces, employed on work agreements and civil servants being appointed, was in compliance with international standards, provided there was no breach of Article 31 § 1 ESC.⁷⁴ In the following supervisory cycle the Committee handed down a ruling, stating the German Constitutional Tribunal, which found on the 2 March 1993 the provision allowing for the replacement of striking workers with new employees as unlawful, was in breach as were the domestic labour law regulations with Article 6 § 4 of the Charter, since such a claim could not be grounded by Article 31 of the Charter.⁷⁵ The Committee has not changed its position in this respect, as seen in the rulings handed down recently with regards to Slovenia.⁷⁶

7) Restrictions to the right to strike as imposed by the courts

In some member states the courts have the power to restrict the right of workers to strike. In such cases, the Committee found itself competent to review the rulings of domestic labour courts with regards to their compliance with the international standards set by the Charter.⁷⁷ During the following nine supervisory cycles the Committee did not make a use of this power. By the 11th supervisory cycle the Committee assessed the judicature of the Danish courts with regards to their compliance with Article 6 § 4 of the Charter and with Article 31 § 1 ESC. This move was consequent to the judgment handed down by the Netherlands Supreme Court on 30 March 1986, which ruled the abovementioned provisions were directly applicable to the Dutch labour law. The Committee was of the opinion, allowing direct applicability in domestic regulations Article 31 § 1 ESC lead to the situation where the provisions of an international treaty create a legal possibility to restrict the right to strike. Therefore, the

social care establishments (Czech Republic), p. 65; power stations, air traffic control, p. 199 (Slovakia); Conclusions 2010, vol. 1 – ban on strikes of employees in electricity and water supply services, p. 40 (Albania); railway sector, p. 188 (Bulgaria); an essential public services, p. 326 (Italy); Conclusions 2010, vol.2 – strike of veterinaries, p. 475-476 (Norway).

⁷³ Conclusions XIV-1, vol. 1, p. 110 (Belgium); p. 158 (Cyprus)

⁷⁴ Conclusions XII-2, pp. 113-114

⁷⁵ Conclusions XIII-2, p. 282

⁷⁶ Conclusions 2004, vol. 2, p. 282. The decision was deferred until information was provided, concerning the legal consequences of the unlawful dismissal of employees by employers during a lawful strike.

⁷⁷ Conclusions I, p. 38

Committee's interest in the rulings handed down by national courts dealing with collective labour relations is justified.⁷⁸ While examining the judgments of the Dutch courts the Committee came to the conclusion that in order to protect financial interests of third parties (consumers, clients) and employers, the courts had been imposing restrictions on both the duration and the measures taken in collective actions initiated by the workers. The Committee claimed on the basis of Article 31 of the Charter, the protection of economic interests of third parties could only be taken into consideration in exceptional cases. The Committee also required to know who made requests before the courts to have the measures and the duration of a collective action limited and whether it was possible to appeal against the judgments of first instance courts in this field.⁷⁹ In the absence of sufficient information with regards to the appeal avenues against interim judgments concerning restrictions of duration of lawful collective actions, the Committee postponed its conclusions concerning the compliance by the Dutch court with Article 6 § 4 of the Charter during the following two supervisory cycles.⁸⁰ The failure of member states to submit information requested by the Committee, therefore forcing the Committee to postpone its conclusions in three subsequent supervisory cycles, constitutes sufficient grounds for the Committee to declare a violation of domestic legislation of those member states with international standards. Having received the required information, the Committee stated the Dutch courts' power to determine whether a strike was premature, confirmed in the judicial practices and rulings of the Netherlands Supreme Court⁸¹, restrict the right to strike, which confirms the Netherlands do not comply with Article 6 § 4 of the Charter.⁸²

The Committee has found similar examples of court-imposed controls over industrial actions in Belgian reports. Although the power to monitor the lawfulness of industrial actions is not formally granted to the Belgian courts, the judges have the right to assess the behaviour of workers participating in such actions. Even if a strike or a picket line is lawful from a formal point of view, courts may decide workers participating in a lawful collective action are guilty of criminal behaviour. The Committee observed the above right is allowing courts to assess collective action and therefore causing judges to be the determiners on whether a strike

⁷⁸ Conclusions XI-1, p. 88

⁷⁹ Conclusions XIII-1, p.158; Conclusions XIII-3, pp. 139-140

⁸⁰ Conclusions XIV-1, pp.555-556; Addendum to Conclusions XV-1, pp.93-94

⁸¹ Judgment of 28 January 2000 cited in Conclusions XVI-1, p. 471

⁸² Conclusions XVII-1, vol. 2, p. 320

is appropriate or not, consequently deciding its legality. The outcome is such rulings handed down by the judiciary results in the restriction of the right to strike.⁸³

IV. The Legal consequences of collective action with regards to individual work agreement

Participation in a lawful strike should not bring about any negative legal consequences for workers.⁸⁴ Whilst analysing the reports of member states, the Committee generally concluded the member states had accepted or regulated legal solutions provided for the legal consequences for the participation in a strike in cases related to the termination of employment contracts, loss of remuneration and civil liability or even criminal responsibility.

1) Strike and the termination of an employment contract

During the first supervisory cycle the Committee concluded the participation in a lawful strike action cannot result in the termination of a work agreement nor can it justify the dissolution of such a contract.⁸⁵ The legal regulations in member states, which do not agree with the above principle, are also in breach of Article 6 § 4 of the Charter. Due to the differences in labour law provisions of various member states with regards to the termination and restoration of work agreements, the Committee concluded in cases where labour regulations provide for automatic termination of a work agreement in the event of a strike, however also obliging the employer to reinstate all the participating workers post strike completion, as being in compliance with international standards. The Committee is of the opinion if those who are participating in a strike and who have their employment terminated, are then reinstated to their former positions after the strike has ended and have none of their acquired rights impaired, such formal termination is not regarded as a breach of the Charter.⁸⁶ When considering their decision concerning the consequences of a strike on individual work agreements, the Committee requested from the members state authorities to provide information confirming their domestic labour legislation ensures the existence of a legal relationship between the parties in the individual work contract when there is a strike. The Committee also requested information showing legislation ensuring workers are reinstated and that their acquired rights are not impaired. The Committee takes the view a strike action should not bring any negative legal consequences with regards to individual work agreements. The Committee therefore ruled against Great Britain and Ireland whose domestic labour law,

⁸³ Conclusions XVI-1, pp. 71 and following; Conclusions XVII-1, vol.1, pp. 68-69

⁸⁴ See: A. Świątkowski, Swoboda podejmowania akcji zbiorowych a prawa obywatelskie, ekonomiczne i socjalne regulowane prawem pracy (Freedom to collective action and for civic, economic and social rights to be regulated by labour law), *Studia z Zakresu Prawa Pracy i Polityki Społecznej* (in: *Studies in Labour Law and Social Policies*), Kraków 1995, pp. 135 and following

⁸⁵ Conclusions I, p. 39

⁸⁶ As above; Conclusions II, p. 29 (Norway); Conclusions XII-2, p. 116

based on the common law, regards a strike as a breach of workers' obligations under a work agreement and therefore in turn gives an employer the right to dismiss a worker immediately and every employee participating in such a collective action.⁸⁷ The ruling handed down by the Commission against the British⁸⁸ and Irish⁸⁹ authorities whose labour law legislation was not in compliance with Article 6 § 4 of the Charter as the regulations provided the employer with the freedom to choose whether he/she would reemploy their striking workers. The British labour law regulations allowed an employer to dismiss all workers taking part in a strike and reemploy workers selectively three months after the dismissal. The Committee came to the conclusion the certainty entailed with the termination of a work agreement for workers partaking in a strike, accompanied by the uncertainty as to who is going to be reemployed, constituted a serious threat to the right to organise and participate in strike action, protected under Article 6 § 4 of the Charter.⁹⁰ Identical was the conclusion of the Committee concerning the provisions of the Danish labour law, which did not ensure reinstatement of the workers dismissed on the grounds of participation in a strike action.⁹¹ As a result of the Committee's conclusions, the provisions discriminating against the participants of lawful strikes have been changed. The Committee was interested in information, whether there are any practical examples of unequal treatment by employees involved in strike actions.⁹²

2) Strike and the right to fair remuneration

Wages are paid for work performed. During a strike workers do not work and therefore they are not entitled to a salary. Therefore member states, without violating international standards, may grant employers the right to deduct from employees' salaries amounts due for the periods when workers were not at work due to the strike action. The Committee has adopted the view that such deductions should be proportional to the length of the strike, but in principle such deductions also function as penalties.⁹³ The Committee declared the French labour provision allowing employers to deduct from workers' salaries (engaged the public sector receiving monthly wages) 1/30th of their wage per day of the strike

⁸⁷ G.S. Morris, T.J. Archer, *Collective Labour Law*, Hart Publishing, Oxford-Portland Oregon 2000, p. 519 and following

⁸⁸ Conclusions XIII-1, p. 160; Conclusions XIV-1, vol. 2, p. 804; Conclusions XV-1, p. 638. On the basis of the opinion issued by the Committee of Social Rights, the Committee of Ministers of the Council of Europe adopted two recommendations addressed to the authorities of Great Britain: No. RchS(93)3, No.RSChS (97)3

⁸⁹ Conclusions XIV-1, vol.1, p. 422; Addendum to Conclusions XV-1, p. 18

⁹⁰ Conclusions XI-1, p. 90; Conclusions XIII-3, pp. 144-145; Conclusions XIV-1, p.804; Conclusions XV-1, pp. 638-639.

⁹¹ Conclusions XIV-1, vol.1, p.181; Conclusions XV-1, vol.1, p.156

⁹² Conclusions XV-1, vol.2, p.619 (Norway)

⁹³ Conclusions XIII-1, p. 153

action, regardless of whether the strike lasted the whole day or only one hour, constitutes a breach of Article 6 § 4 of the Charter.⁹⁴

3) Strike: civil liability and criminal responsibility

During the first supervisory cycle, the Committee decided the domestic labour legislation providing for civil liability (for damages) and criminal responsibility for unlawful acts committed during a strike, cannot be considered as a violation of Article 6 § 4 of the Charter.⁹⁵ In the case of member states where the legal system is based on the common law, the organisers and participants of lawful industrial actions are granted immunity from civil liability and criminal responsibility for the consequences of any events during strikes.⁹⁶ The restriction imposed on the above rule led the Committee to the conclusion these domestic provisions constitute a breach of international standards. Although employers participating in lawful strikes were absolved from civil liability and criminal responsibility⁹⁷, in the Irish legislation, participation of civil servants in a lawful strike action was classified as an offence against the state. Similarly this was appropriated in the circumstances of merchant seamen. Under the Irish criminal law, a strike action of merchant seamen constitutes a breach or neglect of duty or even an act of criminal conspiracy.⁹⁸ The Committee has taken the view the above-cited provisions constitute an impediment of the effective execution of the right to strike by merchant seamen. The Committee recalled public authorities were only entitled to establish procedural requirements regulating the exercise of the right to collective action and any restriction on this right could only be justified according to the relevant conditions laid down in Article 31 § 1 ESC.⁹⁹ Although the provisions subject to which participation in a lawful strike action by civil servants and seamen were acts prohibited by criminal law, had no practical application, the Committee pointed out the maintaining of such provisions constitutes a serious threat to the right to strike.¹⁰⁰ During the following supervisory cycles, the Committee was informed the provisions constituting the basis for the Committee's negative opinion with regards to Irish compliance with international standards of the protection of the

⁹⁴ Conclusions XIII-1, p.154; Conclusions XIII-3, p.135; Conclusions XIV-1, vol.1, p.258; Conclusions 2002, p.36; Conclusions 2010, vol.1, p.267.

⁹⁵ Conclusions I, p. 39

⁹⁶ See: A.Świątkowski, *Uprawnienia, wolności, przywileje, obowiązki i immunitety w prawie związkowym (Rights, liberties, privileges, responsibilities and immunities in trade union law)*, *Studia Iuridica*, vol. 23, Warszawa 1992, pp. 159 and following

⁹⁷ Addendum to Conclusions XI-2, p. 26

⁹⁸ The Conspiracy and Protection Act of 1875. This Act was amended to The Merchant Shipping (Miscellaneous Provisions Act) 1998.

⁹⁹ Conclusions II, p.27; Conclusions X-1, pp.74-75; Conclusions X-2, p.75; Conclusions XI-1, p.76; Addendum to Conclusions XI-2, p.26; Conclusions XIII-1, p.156; Conclusions XIII-3, p.136

¹⁰⁰ Addendum to Conclusions XI-2, pp.24-26; Conclusions XIII-1, p.156; Conclusions XIII-3, p.136

right to strike, had been repealed.¹⁰¹ Irish law does not provide immunity from civil liability and criminal responsibility for participating in a strike action organised by a trade union, which does not have the status of a representative organisation. Domestic labour legislation, which gives employers the right to dismiss the striking employees, is in breach of Article 6 § 4 of the Charter.¹⁰² The Committee concluded keeping such provisions in force under which only trade unions holding a negotiating licence are entitled to carry out collective action, including strikes, was a violation of the provisions under Article 6 § 4 of the Charter.¹⁰³ As pointed out earlier, the Committee was of the opinion a group of employees who are not members of a trade union have the right to organise a lawful strike. Therefore depriving such workers of immunity from civil liability and criminal responsibility for participating in a lawful action is not in compliance with the international protection standards.¹⁰⁴

Although the Committee did not actually deal with the cases of compliance with international standards of industrial action taken up by workers wanting to protect the economic and social interests of employees employed by other employers, it nonetheless stated that excluding those workers from liability striking in a legal collective action against an employer for whom they work, although have been formally employed by an intermediary company, is a violation of the right to strike protected under Article 6 § 4 of the Charter. A similar stand was adopted in the case of industrial action carried out in order to protect employees hired by a different intermediary company than the striking employees, although working for the same employer.¹⁰⁵

The immunity from civil liability and criminal responsibility for participating in a lawful strike should be granted to all workers, regardless of trade union membership. The Committee is of the opinion the authorities of members states should ensure legal protection of all workers involved, either as organisers or as participants, in a lawful industrial collective action.¹⁰⁶ The exclusion from this protection of striking workers who are not members of a trade union is incompatible with the international standards protecting the rights of the workers.¹⁰⁷

The Committee also dealt with the liability of the strike organisers and concluded the power of the state authorities to impose excessive financial sanctions for the violation of the

¹⁰¹ Addendum to Conclusions XV-1, p. 27

¹⁰² Conclusions 2004, vol. 1, p. 265

¹⁰³ Conclusions XIII-1, p. 156; Conclusions XIII-3, p. 136

¹⁰⁴ Conclusions XIV-1, p.422; Addendum to Conclusions XV-1, p.27

¹⁰⁵ Case of Great Britain: Conclusions XII-1, pp.131-132; Conclusions XIII-1, pp. 159-160; Conclusions XIV-1, vol.2, p. 805; Conclusions XV-1, vol.2, p. 637.

¹⁰⁶ Conclusions 2004, vol. 2, p. 405 (Norway)

¹⁰⁷ Conclusions XVII-1, vol.1, p. 135 (Denmark)

procedural requirements with regards to collective action constitutes a breach of Article 6 § 4 of the Charter. Under the Swedish labour law legislation failure to give requisite notice of a collective action may lead to a fine between 30 000 and 100 000 Swedish Krona (SEK; 3 301 – 10 831 euros) and litigation for the violation of a postponement order (discussed in detail in the subsequent paragraph) may entail liability ranging from a minimum 300 000 SEK (33 008 euros) up to a maximum of one million SEK (108 310 euros).¹⁰⁸

V. Concluding remarks

Lawyers specialising in labour law are well aware of the threats posed by economic globalisation and its consequences, to labour and social rights. A response to today's economic globalisation is the globalisation of social rights, especially the elements that are part of fundamental human rights. The right to strike is a fundamental human right and therefore must be included in the rights protected within the international sphere. This sphere has been created within Europe. Its legal basis is the European Social Charter, which in Article 6 § 4 guarantees employees the right to strike and workers' representatives the right to organise strikes and other protest actions in order to protect their fundamental economic, social and workers' rights and trade union freedoms. The right to strike, which is standardised throughout the European continent, allows workers to respond in a uniform fashion to products and services offered at lower prices from external markets attempting to enter the EU's single market or the domestic markets of other European countries. The globalisation of social rights is thus an attempt to protect against the negative consequences of economic globalisation, which results in the reduction of social rights protection of employees, reducing their rights, or depriving them of legal protection in the event of redundancies. Introducing uniform standards of the right to strike in Europe, allows businesses seeking cheaper labour to be aware of the defences made available to them, which can be taken advantage of by workers, whose employment has been threatened. The rulings handed down by the European Court of Justice in the Viking, Laval and other cases¹⁰⁹ have shown that social dumping within the EU undertaken in the "old" Member States by businesses from "new" Member States can be met with an effective response by the threatened workers who are entitled to strike and to other protest actions.

¹⁰⁸ Conclusions 2002, p.237; Conclusions 2004, vol.2, p. 566

¹⁰⁹ R.Blainpain, A.M. Świątkowski (eds.), The Laval and Viking Cases: Freedom of Services and Establishment v. Industrial Conflict in the European Economic Area and Russia, Bulletin of Comparative Labour Relations, No. 69, Kluwer Law International, *passim*.

